

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS CIV.

2008 SEP 10 PM 1 37

PATRICK E. LUTZ, CLERK

PAUL LANDE, JR.,

Plaintiff,

vs.

BILLINGS HOSPITALITY, INC.,

Defendants.

CV-06-133-BLG-RFC

BY

DEPUTY CLERK

ORDER ADOPTING FINDINGS
AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE

On August 15, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation with respect to Billings Hospitality's Motion to Dismiss Under Rule 12(b) (*Doc. 18*). *Doc. 27*. Magistrate Judge Ostby recommends the motion be granted on the grounds that the doctrine of res judicata deprives this Court of jurisdiction.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). As of September 10, 2008, neither party has lodged an objection as to the Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After a de novo review of the relevant law, this Court agrees that the Amended Complaint must be dismissed with prejudice because each element of res judicata under South Dakota law is

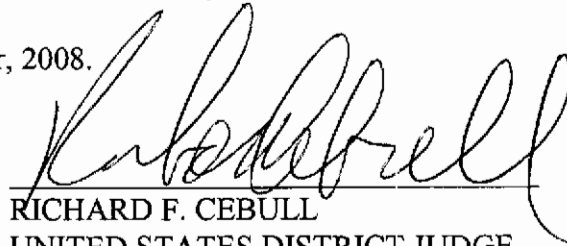
met. For that reason, this Court lacks subject matter over Plaintiffs claims and dismissal is appropriate pursuant to Rule 12(b)(1) Fed.R.Civ.P.

Accordingly, **IT IS HEREBY ORDERED** Magistrate Ostby's Findings and Recommendations (*Doc. 37*), being well-grounded in law and fact, are adopted in their entirety.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Under Rule 12(b) (*Doc. 28*) is **GRANTED** and Plaintiff's Amended Complaint (*Doc. 27*) is **DISMISSED WITH PREJUDICE**.

The Clerk of Court shall notify the parties of the entry of this Order and close this case.

DATED the 10th day of September, 2008.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE